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SUBJECT: AVIATION EXPORT CONTROL MEETINGS JUNE 15-22

¶1. (SBU) Summary: On the margins of the Paris Air Show, Post facilitated meetings among USG, GOF, and industry representatives to discuss export control systems related to aviation. A strong turn-out confirmed a common interest in improving awareness and transparency of export licensing systems, and stepped-up dialogue among policymakers and industry majors. Priority issues raised by the 63 participants included: license processing time, paperless applications, transactional- based versus global and program licensing; embedded sub-systems in higher end-use products; certified companies; prospects for an integrated export control regulatory entity; and the impact of new EU directives on U.S.-EU defense export trade. See Para 15 for consensus follow-up recommendations/actions. End summary.

Meeting Participants

¶2. (U) On June 16-17 Robert S. Kovac, Acting Deputy Assistant Secretary for Defense Trade, led a U.S. interagency delegation in meetings with European industry leaders, a high-level bilat with GOF export control officials, and a working lunch with U.S. and European aerospace industry executives. Separately, the Commerce Department led two educational outreach technical seminars in Paris (June 17) and Toulouse (June 22), with roughly 40 participants in each and support from US and European trade associations, GIFAS, AIA, and USAIRE.

The Evolving Context for Export Controls

¶3. (U) Kovac opened the meetings by noting changes in the defense product market since the enactment of the Arms Export Control Act (AECA). No longer are end-users limited to foreign governments who import mature, tested technologies designed solely for military use. With increased leveraging of commercial technologies, the definition of a defense article has evolved and certain products have valid non-military applications that may no longer pose threats to national security. The point was echoed by an EADS executive who noted that the aviation sector's trend toward globalization renders some export legislation out-of-date. Although the U.S. and French and European systems differ in terms of requirements, basis in law and objectives, participants agreed on the need to adapt to the new context and work together for a more efficient and effective system.

License Processing Time

¶4. (U) The U.S. delegation highlighted recent improvements in license processing time: 15 days instead of the previous 45-day average. Cases running over 60 days are due to specific national security concerns, of which two-thirds stem from Congressional notification requirements. GOF officials noted it takes four months

for France's two-stage licensing process. Within two months, companies obtain prior approval to enter into contract negotiations. The remaining processing time is for licensing of exports once a contract has been signed. Out of the nearly 10,000 applications per year, France grants prior approval to negotiate to 6,000 applicants. Export license processing for dual-use goods is roughly 18 days.

Global and General Licenses

¶15. (U) GOF officials explained their use of Global Prior Approvals and Global Export Licenses for non-sensitive military goods with the EU and associated countries. The Global License is considered at the request of the exporting company, which argues its case and presents a list of equipment, subcontractors, and partners. For companies with a small number of applications for a single end-user (nearly 20 percent of all cases), a simplified electronic procedure is now used that saves up to 30 days. Other global licenses exist for non-sensitive transfer between national branches of European companies (e.g. EADS, Thales, Eurocopter). The GOF exempts from licensing procedures some products that fall within the framework of an approved technical cooperation agreement on aircraft programs (e.g. Airbus A400M, Tiger Helicopter). The companies involved, and equipment allowed, are narrowly defined by France's Inter-ministerial Commission for the Study of War Material Exports (CIEEMG).

¶16. (U) The GOF grants "General Licenses" for transfers of dual-use goods published in the national customs regulations. These transfers occur among certified EU members and seven associated countries, including the United States, GOF officials explained. GOF representatives said this approach represents a cultural shift in Europe for export-control policies.

Dialogue on USG Policy

¶17. (U) AIA representatives expressed regret over the USG's perceived lack of trust in U.S. companies. They encouraged dissemination of information to U.S. companies and the Congress on the impact of U.S. export controls on the defense product market. EADS Group Export Compliance Officer recommended increased dialogue among Congress, the European Parliament, and European industry majors. In Europe, there needs to be more transparency regarding USG policy. Thales VP for Ethics and Corporate Responsibility pressed for GOF/USG officials to build confidence, trust, and increase exchanges with companies.

End-User Liability

¶18. (SBU) GOF and French industry representatives pointed out that the U.S. transaction-driven system does not recognize the EU as a "trusted community" benefitting from a blanket waiver. A/DAS Kovac raised his concerns on coordination and procedures to remove a company or country from the EU community. How will differing judgments on bona fide status be reconciled? Who evaluates the company, influences the certification process, and ensures integrity of compliance with the license and other approval conditions? If no national government takes responsibility, is there an independent certification authority for effective liaison and coordination with ombudsmen?

¶19. (SBU) With growing numbers of company mergers and acquisitions, shipment tracking has become more difficult. Liability and responsibility concerns also surround transfers from tier-one companies to subcontractors or partners in another country, Kovac noted. It is crucial to identify the end-use in order to address successor liability and meet certification standards. This reduces the risks posed by front companies, and the number of problems clearing U.S. customs.

¶10. (U) GOF officials described their due diligence on companies seeking export licenses. But it was unclear who manages "certified companies" and obtains assurances of ongoing compliance with license requirements. Kovac recommended that French companies indicate whether they have obtained prior approval for a specific product from the Prime Minister's office (SGDN) when applying for a USG

license; such approval can be viewed as prima facie evidence the company is bona fide and the product has a proper end-use.

End-use issues

¶11. (SBU) EADS told the group its biggest challenge is the incorporation of U.S. products into EU programs. The company wants to comply with both GOF and USG rules, and is on occasion forced to ground aircraft and redesign parts to gain full control over its product. Some companies have resorted to advertising "Itar-free" products for a competitive advantage, Kovac noted. Such companies could be considered by the USG as less-than-responsible partners in export decisions.

Intra-EU Transfers Directive

¶12. (U) GOF and European industry drew attention to the recently-approved EC Defense Package that establishes a pan-European defense market through licensing and defense acquisition reform. The EU directive on intra-EU transfers simplifies terms and conditions for defense-related products. Within two years, EU arms transfer procedures will be under the purview of the European Commission. In coming months, the GOF plans to replace its national export control list (in existence since 1991) with the European common list of military equipment which includes the regular updates of the Wassenaar Munitions List.

¶13. (U) Participants underscored the importance of the creation of a European Base for Industrial and Technological Defense (EDTIB), which underpins European Security and Defense Policy. They noted that EDTIB aims at developing an integrated, less duplicative, European equipment and systems supply marketplace with lower transaction costs, enhanced security of supply and greater industrial cooperation. Given that the USG does not recognize the "EU trusted community", ITAR restrictions will apply to re-exports of USG-controlled items throughout the EU, while European-made equipment will benefit from cheap, simplified and accelerated procedures regarding transfers among member states. (Comment: This could constitute a comparative advantage for European suppliers in the assessment of security of supply criteria by favoring procurement in the EU, a situation likely to disadvantage U.S. bidders. End comment.)

Educational Outreach Technical Seminars

¶14. (U) Commerce/BIS, Defense/DTSA and State/DDTC export control specialists conducted introductory and intermediate educational outreach seminars on dual-use and ITAR controlled trade at the PAS and in Toulouse. For those wishing to discuss company-specific export control issues, they also held individual counseling sessions. USG speakers presented their insights to a total of 80 participants on how commodity jurisdictions and license applications are evaluated by various agencies, the information they weigh, and how this information substantiates recommendations. In Toulouse, their program also included a visit to the A380 mock-up facility.

Follow-up topics for discussion

¶15. (SBU) The following areas were flagged for follow-on discussion or action:

-- hold a second bilateral meeting this year once senior GOF MFA and USG senior export control officials have been named (the MFA recalled it is in the midst of creating a new interagency secretariat that it will chair to cover dual-use items);

-- USG review of the ITAR licensing jurisdiction and determination of products that can be removed from control;

-- French officials stated they are conducting a comprehensive review of the national export control list;

-- DDTC will inform GOF and industry on possible modifications to

AECA/ITAR;

- bolster bilateral dialogue on irresponsible countries;
- discuss a system to work out compliance problems using an ombudsman or hotline so European companies understand U.S. law;
- further discussions on creating harmonized procedures for licensing multinational companies in a manner that capture differing laws, sanctions, commitments;
- discuss intangible transfers and shared concern about the protection of highly sensitive know-how in areas of safeguarded technologies;
- complete conversion to paperless license processing procedures, and improve processing delays to respond to industry's concerns;
- further discussion on embedded Itar-controlled subsystems in civil aircraft;
- strengthen USG awareness of GOF regulations and practices that ensure ongoing company compliance with U.S. export control rules;
- create European mechanisms for tracking and auditing company's bona fide status, operations and documents to avoid diversion or unauthorized use of U.S. origin products;
- ASD proposed that the Society for International Affairs (SIA) add an export control conference for transatlantic dialogue between companies (in 2010) and asked for DDTC support.

¶16. Comment: A diplomatic as well as technical success, the export-control meetings clearly met a transatlantic demand for governments and industries to engage more frequently. It also underscored a shared commitment to improve efficiency of existing systems. Participants indicated they appreciated learning about how the process works, but perhaps more importantly simply having an opportunity to meet those involved in the process in Washington. Embassy Paris expresses its appreciation USDOC/BIS, Defense/DTSA and State/DDTC for supporting this program.

¶17. (U) This cable was cleared by Acting DAS Kovac.

Pekala